

2
3 **FINAL DRAFT**

4
5 **VIATICAL SETTLEMENT ACT AMENDMENTS**

6
7 2004 GENERAL SESSION

8
9 STATE OF UTAH

10 **Sponsor:**

11
12 AN ACT RELATING TO INSURANCE; RELATING TO

13
14
15 (“SUMMARY”)

16
17 This act affects sections of Utah Code Annotated 1953 as follows:

18
19 AMENDS:

20
21 **31A-36-104**, as enacted by Chapter 81, Laws of Utah 2003

22 **31A-36-119**, as enacted by Chapter 81, Laws of Utah 2003

23
24 *Be it enacted by the Legislature of the state of Utah:*

25
26 Section X. Section **31A-36-104** is amended to read:

27
28 **31A-36-104. License requirements, revocation, and denial.**

29
30 (1) A person may not, without first obtaining a license from the commissioner,
31 operate in or from this state as a provider or producer of viatical settlements. Viatical
32 settlements are included within the scope of the life insurance producer line of authority.

33 (2) In addition to the requirements of Section 31A-23a-117, upon the filing of an
34 application and the payment of the license fee for a provider of viatical settlements
35 license, the commissioner shall make an investigation of each applicant and issue a
36 license if the commissioner finds that the applicant :

37 (a) is competent and trustworthy and intends to act in good faith as a provider of
38 viatical settlements; and

39 (b) has a good business reputation and has had experience, training, or education
40 so as to be qualified as a provider of viatical settlements.

41 ~~[(2)]~~(3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and
42 31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew
43 the license of a provider or producer of viatical settlements if the commissioner finds
44 that:

45 (a) a provider of viatical settlements demonstrates a pattern of unreasonable
46 payments to viators;
47 (b) the applicant or licensee, or an officer, partner, member, or key management
48 personnel:
49 (i) has, whether or not a judgment of conviction has been entered by the court,
50 been found guilty of, or pleaded guilty or nolo contendere to:
51 (A) a felony; or
52 (B) a misdemeanor involving fraud or moral turpitude; or
53 (ii) violated any provision of this chapter;
54 (c) a provider of viatical settlements has entered into a viatical settlement not
55 approved under this chapter;
56 (d) a provider of viatical settlements has failed to honor obligations of a viatical
57 settlement;~~[or]~~
58 (e) a provider of viatical settlements has assigned, transferred, or pledged a
59 viaticated policy to a person other than:
60 (i) a provider of viatical settlements licensed under this chapter;
61 (ii) a purchaser of the viatical settlement;
62 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
63 230.501;
64 (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec.
65 230.144A;
66 (v) a financing entity;
67 (vi) a special purpose entity; or
68 (vii) a related provider trust; or
69 (f) a provider of viatical settlements has failed to maintain the standards set forth
70 in Subsection (2)(a) or Subsection (2)(b).
71 ~~[(3)]~~(4) If the commissioner denies a license application or suspends, revokes, or
72 refuses to renew the license of a provider or producer of viatical settlements, the
73 commissioner shall conduct an adjudicative proceeding under Title 63, Chapter 46b,
74 Administrative Procedures Act.

75
76 Section X. Section **31A-36-119** is amended to read:

77
78 **31A-36-119. Authority to promulgate rules.**

79
80 The commissioner may adopt rules to:

- 81 (1) establish the requirements for the annual statement required under Section
82 31A-36-106;
83 (2) establish standards for evaluating the reasonableness of payments under
84 viatical settlements to persons chronically ill or terminally ill, including the regulation of
85 the rates of discount used to determine the amount paid in exchange for an assignment,
86 transfer, sale, devise, or bequest of a benefit under a policy;
87 (3) establish appropriate licensing requirements, fees, and standards for continued
88 licensure for providers and producers of viatical settlements;
89 (4) require a bond or otherwise ensure financial accountability of providers and
90 producers of viatical settlements;

- 91 (5) govern the relationship of insurers with providers and producers of viatical
92 settlements during the viatication of a policy;
93 (6) determine the specific disclosures required under Section 31A-36-108;
94 (7) determine whether advertising for viatical settlements violates Section 31A-36-
95 112; ~~and~~
96 (8) determine the information to be provided to the commissioner under Section 31A-
97 36-114 and the manner of providing the information;
98 (9) determine additional acts or practices that shall be prohibited under Section 31A-
99 36-111; and
100 (10) establish payment requirements for the payments in Section 31A-36-110.
101

102
103
104
105
106
107 LEG.2004.15.VIATICAL.10-14-03
108